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REPORT
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AMENDING THE ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979 TO STRENGTHEN THE ENFORCEMENT PROVISIONS OF THAT ACT, AND FOR OTHER PURPOSES

SEPTEMBER 30 (legislative day, SEPTEMBER 26), 1988.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 4068]

The Committee on Energy and Natural Resources to which was referred the Act (H.R. 4068) to amend the Archaeological Resources Protection Act of 1979 to strengthen the enforcement provisions of that Act, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the Act, as amended, do pass.

The amendment is as follows:

On page 1, line 5, strike subsection (a) and renumber succeeding subsections accordingly.

PURPOSE OF THE MEASURE

The purpose of H.R. 4068 is to strengthen the Archaeological Resources Protection Act of 1979 to prohibit attempted excavation, removal, or defacing of archaeological resources, and to reduce the felony threshold value of illegally removed artifacts to $500.

BACKGROUND AND NEED

The Archaeological Resource Protection Act (ARPA) was passed in 1979 to respond to increased vandalism and looting of archaeological resources on Federal and Indian lands. ARPA requires a permit for excavation or removal of archaeological resources from these lands, prohibits removal without such a permit and prohibits the sale of illegally obtained archaeological resources. ARPA also provides criminal penalties for violations of the provisions of the Act, based on the value of the archaeological resources.

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Difficulties have arisen in using ARPA as an effective deterrent to looting and vandalism of archaeological sites. Lack of funding expended by agencies for enforcement makes protection difficult.

Another problem centers around obtaining jury convictions with the felony threshold of $5,000. Currently, ARPA provides for felony penalties if the value of the archaeological resource involved in the offense and the cost of restoration and repair of that resource exceed $5,000. Determining the value of the archaeological resources damaged entails professional evaluation often difficult to convey to juries.

H.R. 4068 addresses these concerns by broadening the authority of ARPA to prohibit attempted excavation, removal, damaging or defacing of archaeological resources and by decreasing the felony threshold value of illegally removed artifacts to $500.

Legislative History

H.R. 4068 passed the House on July 26, 1988. A similar measure, S. 1314, was introduced by Senator Domenici on June 3, 1987. A hearing was held on both measures by the Subcommittee on Public Lands, National Parks and Forests on September 14, 1988.

At the business meeting on Thursday, September 22, 1988, the Senate Committee on Energy and Natural Resources ordered H.R. 4068, as amended, favorably reported.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on Thursday, September 22, 1988, by unanimous voice vote of a quorum present, recommends that the Senate pass H.R. 4068 if amended, as described herein.

Committee Amendments

During the consideration of H.R. 4068, the Committee adopted one amendment. The amendment would remove language in H.R. 4068 that would have deleted the current requirement in ARPA that a resource protected under the Act must be "of archaeological interest."At a hearing before the Subcommittee on Public Lands, National Parks and Forests, the Park Service testified that the definition of "archaeological resource" is clear in the regulations implementing ARPA, and that no such deletion is necessary.

Section-by-Section Analysis

Section 1(a) makes a technical change in punctuation to ARPA.

Section 1(b) amends Section 6(a) of the Act, which sets forth prohibited acts and criminal penalties, by inserting after "deface" the phrase ", or attempt to excavate, remove, damage, or otherwise alter or deface".

Section 1(c) amends Section 6(d) of ARPA by striking "$5,000" and inserting "$500". Section 1(c) provides felony penalties if the value of the archeological resource involved in the offense, and the cost of restoration and repair of that resource, exceed $500.

Section 1(d) amends Section 10 of ARPA by adding a new subsection directing federal land managers to increase public awareness

of the significance of the archeological resources located on public lands and Indian lands and the need to protect such resources. The section also directs the land managers to submit annual reports to the appropriate Committees of Congress.

Cost and Budgetary Considerations

The following estimate of the cost of this measure has been provided by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 27, 1988.

Hon. J. Bennett Johnston, Jr.
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 4068, an act to amend the Archaeological Resources Protection Act of 1979 to strengthen the enforcement provisions of that act, and for other purposes. The act was ordered reported by the Senate Committee on Energy and Natural Resources, September 22, 1988. Enactment of H.R. 4068 is not expected to have any significant effect on the federal budget or on those of state or local governments.

H.R. 4068 would direct federal land managers to establish programs to increase public awareness of archaeological resources. Each agency would be required to submit an annual report to the Congress regarding its efforts.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deb Reis, who can be reached at 226–2860.

Sincerely.

James L. Blum, *Acting Director.*

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 4068. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 4068, as reported.

Executive Communications

On August 19, 1988, the Committee on Energy and Natural Resources requested legislative reports from the Departments of Agriculture and the Interior and the Office of Management and Budget setting forth executive views on H.R. 4068. These reports had not been received at the time the report on H.R. 4068 was filed. When the reports become available, the chairman will request that they

be printed in the Congressional Record for the advice of the Senate. The testimony provided by the appropriate agency at the Subcommittee hearing follows:

STATEMENT OF WILLIAM. L. RICE, DEPUTY CHIEF, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the subcommittee; thank you for this opportunity to offer the Department of Agriculture's views on S. 1314, H.R. 4068, and S. 1985, all of which would amend the Archaeological Resources Protection Act of 1979.

S. 1314 AND H.R. 4068, TO STRENGTHEN THE ENFORCEMENT PROVISIONS OF ARPA

S. 1314 and H.R. 4068 would strengthen the Archaeological Resources Protection Act (ARPA). We support the enactment of S. 1314. We would also support the enactment of H.R. 4068 if amended as described below.

Both bills would amend section 6(a) of ARPA to make it possible to arrest and prosecute those who "attempt" to loot archaeological resources. ARPA is presently worded so that actual excavation, removal, damage, or defacing—and therefore archaeological resource damage—must occur before an arrest can be made. It is very difficult to catch violators in the act of looting. This amendment would make it possible to arrest, prosecute, and convict without damage to the resource.

Both bills would also amend section 6(d) of ARPA to lower the threshold between a misdemeanor and a felony from $5,000 to $500. Under current law, in order to obtain a felony conviction, we must prove that the commercial and archaeological value and the cost of restoration and repair of the archaeological resources exceeds $5,000. Determining the commercial value and restoration and repair costs for vandalized resources is relatively easy and straight-forward. However, the archaeological value is subject to varying professional opinions, and is therefore difficult to determine and defend. Reducing the value to $500 would increase the number of felony cases, because the commercial value and restoration and repair costs frequently exceed $500. This would serve as a significant deterrent to archaeological resource vandalism and theft.

If these amendments to ARPA are enacted, we would anticipate a higher conviction rate, more felony convictions and, most importantly, a reduction in the looting of archaeological resources.

H.R. 4068 would amend section 3(1) of ARPA by changing the definition of the term "archaeological resource." The phrase "which are of archaeological interest" would be struck from the definition. This subjective test has proven troublesome, because there are widely differing opinions regarding what is "of archaeological interest." On the other hand, the definition of "archaeological resource" in existing ARPA regulations is clear and does not need to be changed. Therefore, while we do not object to this deletion, it is not necessary. If this language is deleted, however, we recommend that the Committee report clarify that no change in the regulations will be needed.

H.R. 4068 would also amend section 10 of ARPA to require Federal land managers to establish a public awareness program dealing with the significance of the archaeological resources on public lands and Indian lands, and require annual reports to Congress on this program. While we do not object to conducting a public awareness program, and have authority to do so, we believe the reporting requirement duplicates the annual report already required by ARPA. Therefore, we recommend against this additional reporting requirement.

S. 1985, TO IMPROVE THE PROTECTION AND MANAGEMENT OF ARCHAEOLOGICAL RESOURCES

We oppose enactment of S. 1985.

S. 1985 would amend ARPA by adding a new section to require the Secretaries of the Interior, Agriculture, and Defense, and the Chairman of the Board of the Tennessee Valley Authority to develop plans and a schedule for archaeological surveys of lands under their control.

Presently, we conduct archaeological resource surveys on all National Forest lands where proposed land management activities could possibly disturb archaeological resources. We also survey areas where we believe there is a high probability of finding significant archaeological resources.

Additionally, cooperators. such as volunteers and universities, under the direction of the local Forest Supervisor, conduct surveys on National Forest lands. We do not, however, plan to survey the entire 190 million acres of the National Forest System. Because of the tremendous cost of implementing such a plan, and because many of the lands have a very low probability of containing important archaeological resources, we believe a complete survey is unnecessary. We prefer to utilize sampling and other survey strategies to identify significant archaeological values on areas not involved in current land management activities.

Additionally, S. 1985 would require each Secretary to develop documents and a process for reporting suspected violations of ARPA. In 1982, we implemented the Law Enforcement Management Reporting System (LEMARS) in the Forest Service. LEMARS provides Forest Service managers with a means of identifying, monitoring, and evaluating law enforcement activities through statistical analysis of the information provided on law enforcement reports, such as warning and violation notices, incident reports, and court disposition updates. We believe that LEMARS meets the intent and purpose of S. 1985 in regard to a reporting system for ARPA violations.

Like any system. it is not without shortcomings. In some cases. adequate data is not provided to the system. Educating and motivating employees about LEMARS is an ongoing process. We believe, however. that LEMARS is as good as any new system that we could devise in response to S. 1985.

Mr. Chairman, this concludes my testimony. I would be pleased to answer any questions you may have.

STATEMENT OF JERRY ROGERS, ASSOCIATE DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman, I appreciate the opportunity to provide your Subcommittee with the views of the Department of the Interior on these bills.

We strongly recommend the enactment of S. 1314. Alternatively, we would recommend the enactment of H.R. 4068, if it is amended as discussed below.

We do not recommend enactment of S. 1985, because it duplicates existing authority and procedures already in practice by the land managing agencies.

All three bills would amend the Archaeological Resources Protection Act of 1979. That Act authorizes Federal land managers to issue permits to qualified persons for removal of archeological items that are 100 years old or older. It prohibits the excavation or removal of archeological resources without such a permit, and it prohibits the sale or trade of resources removed from public lands or Indian lands without a permit. Criminal penalties are established for violations, beginning with not more than $10,000 or one year imprisonment for knowing violations. Civil penalties are also authorized.

S.1314 and H.R. 4068 would amend the 1979 Act in the following respects:

—H.R. 4068 deletes the requirement that a resource to be protected under the Act must be "of archeological interest"; no similar provision appears in S. 1314;

—S. 1314 and H.R. 4068 make *attempted* violation of prohibited acts a crime in addition to *actual* violation as in the current law;

—S. 1314 and H.R. 4068 reduce from $5,000 to $500 the value of resources which, if harmed, give rise to a doubling of the penalty; and

—H.R. 4068 directs each Federal land manager to establish a public awareness program and submit an annual report thereon to the committees. No similar provision is contained in S. 1314.

We understand that the phrase "of archaeological interest" is deleted in H.R. 4068 because it has caused some confusion in some prosecutions for violations under the Act. While we do not object to this deletion, we believe is unnecessary. The definition of "archaeological resource" in the existing regulations implementing the Act is clear and does not require any modification. If the committee adopts this provision we recommend that language in the committee report be included to affirm our belief that no change in the regulations is needed.

We strongly support making attempted violations a crime. Under existing law we cannot prosecute for looting archeological resources until after the damage has occurred, and often then it is too late to save the material.

We also support lowering the value threshold to $500. We understand that prosecutors frequently have difficulty in demonstrating to judge and jury that damage meets or exceeds the present threshold of $5,000. The lower amount would probably not lessen the

need for expert archeological testimony about the cost of scientifically excavating and analyzing the resource and the cost of restoring and repairing a damaged resource, but judges and juries would more readily accept such testimony toward proving the lower value than the higher one.

H.R. 4068 would also require Federal land managers to establish a program to increase public awareness of the significance of archeological resources on public lands, and the need to protect such resources. The bill would require each land manager to submit an annual report to the authorizing committees on the actions taken. We have no objection to a public awareness program concerning the need to protect archeological resources, and we can do so under existing authority, but we see no need for an additional report. If the committees desire information on public awareness activities, it could be provided as part of the annual report to the Congress that is already required under the Act. We recommend the committee amend this provision such that the requirement to submit a report will be satisfied by information included in the annual report required under existing law, if the committee adopts H.R. 4068.

S. 1985 would direct Interior, Agriculture, Defense, and TVA to develop plans for archeological surveys on their lands, prepare a schedule for surveying lands containing the most scientifically valuable archeological resources, and develop documents for reporting suspected violations and procedures for completing such reports.

We believe these proposed requirements duplicate the planning and inventorying that land management agencies are already authorized to do. For example, the National Park Service already has cultural resource management plans for most of its units. These plans are designed to include evaluations of survey needs and plans for programming these surveys.

Moreover, the land-managing bureaus in Interior already have developed documents and instituted procedures for reporting violations of ARPA. The National Park Service has also developed additional training for Federal and State law enforcement and resource specialists on how to use ARPA when violations have occurred or are suspected. We are working with the other agencies to improve the systematic collection of ARPA violation data Government-wide. Additional plans and document requirements, such as are contained in S. 1985, are not necessary.

Accordingly, we oppose enactment of S. 1985.

This concludes my prepared testimony, Mr. Chairman. I would be pleased to respond to any questions you may have.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act, H.R. 4068, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1970, AS AMENDED

(93 Stat. 721; 16 U.S.C. 470aa et seq.)

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SEC. 3. As used in this Act—

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(3) The term "public lands" means—

(A) lands which are owned and administered by the United States as part of—

(i) the national park system,

(ii) the national wildlife refuge system, or

(iii) the national forest system; and

(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution[:].

* * * * * * *

SEC. 6. (a) No person may excavate, remove, damage, or otherwise alter or deface, *or attempt to excavate, remove, damage, or otherwise alter or deface* any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 4, a permit referred to in section 4(h)(2), or the exemption contained in section 4(g)(1).

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of—

(1) the prohibition contained in subsection (a), or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

(d) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than $10,000 or imprisoned not more than one year, or both: *Provided, however,* That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of [$5,000] *$500,* such person shall be fined not more than $20,000 or imprisoned not more than two years, or both. If the case of a second or subsequent such violation upon conviction such person shall be fined not more than $100,000, or imprisoned not more than five years, or both.

(e) The prohibitions contained in this section shall take effect on the date of the enactment of this Act.

(f) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource

which was in the lawful possession of such person prior to the date of the enactment of this act.

(g) Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground.

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SEC. 10. (a) The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996). Each uniform rule or regulation promulgated under this Act shall be submitted on the same calendar day to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives, and no such uniform rule or regulations may take effect before the expiration of a period of ninety calendar days following the date of its submission to such Committees.

(b) Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a), as may be appropriate for the carrying out of his functions and authorities under this Act.

(c) Each Federal land manager shall establish a program to increase public awarencess of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources. Each such land manager shall submit an annual report to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate regarding the actions taken under such program.

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